

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Cleophis Favor, Jr.,)	Civil Action No.: 3:20-cv-03634-JMC
)	
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
Officer Jerry S. Barnwell; Sheriff Lee)	
Boan; and Kershaw County Detention)	
Center Director Tyrell Catoe,)	
)	
Defendants.)	
_____)	

Plaintiff Cleophis Favor, Jr., proceeding *pro se* and *in forma pauperis*,¹ brought this action pursuant to 42 U.S.C. § 1983 against Officer Jerry S. Barnwell (“Barnwell”), Sheriff Lee Boan (“Boan”), and County Detention Center Director Tyrell Catoe (“Catoe”). Plaintiff alleges violations of his constitutional rights while incarcerated at the Kershaw County Detention Center and requests punitive damages. (ECF No. 12 at 2, 6.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), the matter was referred to a United States Magistrate Judge for pretrial handling. On April 7, 2021, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending Plaintiff’s action be dismissed.² (ECF No. 30.)

For the reasons set forth below, the court **ACCEPTS** the Magistrate Judge’s Report and Recommendation (ECF No. 30) and **DISMISSES** this action.

¹ The court recognizes that Plaintiff, as a *pro se* litigant, is to be treated with deference. *See Ballard v. Carlson*, 882 F.2d 93, 96 (4th Cir. 1989). As such, his pleadings are to be liberally construed. *See Hill v. Braxton*, 277 F.3d 701, 707 (4th Cir. 2002); *Noble v. Barnett*, 24 F.3d 582, 587 n.6 (4th Cir. 1994).

² The Magistrate Judge’s previous Report and Recommendation (ECF No. 18) is rendered moot with the court’s acceptance of the recommendation from the instant Report.

I. BACKGROUND

Plaintiff filed his original Complaint on October 16, 2020. (ECF No. 1.) On October 22, 2020, the Magistrate Judge determined that Plaintiff failed to provide sufficient information for review and ordered the case to be brought into proper form. (ECF No. 6.) On November 30, 2020, Plaintiff filed his Amended Complaint. (ECF No. 12.) Plaintiff alleges that on the night of May 1, 2020, at approximately 10:30 p.m., Officer Barnwell assaulted him and then refused to take him to the hospital. (*Id.* at 5.) He asserts Officer Barnwell slammed a door on his foot and caused him injury and emotional distress, and that he was denied medical treatment while at the detention center. (*Id.* at 6.)

The Magistrate Judge issued the first Report and Recommendation on January 6, 2021, recommending service on Defendants Boan and Catoe be denied. (ECF No. 18 at 4.) On March 15, 2021, the copy of the first Report and Recommendation sent to Plaintiff was returned as undeliverable with a note that Plaintiff was released from his facility on December 17, 2020. (ECF No. 26.) The Magistrate Judge issued the instant Report on April 7, 2021. (ECF No. 30.)

II. LEGAL STANDARD

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court reviews *de novo* only those portions of a magistrate judge's report and recommendation to which specific objections are filed, and reviews those portions which are not objected to for clear error, including those portions to which only "general and conclusory" objections have been made. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The court may accept, reject, or modify, in

whole or in part, the recommendation of the magistrate judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

III. ANALYSIS

A. The Magistrate Judge's Review

In the Report, the Magistrate Judge found that Plaintiff failed to comply with an order to notify the court of any change in address. (ECF No. 30 at 2.) They further noted Plaintiff failed to respond to a Motion to Compel (ECF No. 27) filed by Defendants on March 18, 2021 (ECF No. 30 at 2). The Magistrate Judge sent the Report to Plaintiff's last known address and requested Plaintiff notify the court within the time set for filing objections if he wished to continue with the case and provide the court with a current address. (*Id.*) The Magistrate Judge recommended Plaintiff's action be dismissed in accordance with Rule 41(b) if Plaintiff failed to make a timely objection. (*Id.* at 2-3.)

B. No Objections

The Magistrate Judge advised the parties of their right to file specific written objections to the Report within fourteen (14) days of the date of service. (ECF No. 30 at 4 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)).) Plaintiff failed to provide the court with a current address before the deadline, and none of the parties filed any timely objections to the Report.

In the absence of a timely objection to the Magistrate Judge's Report, the court is not required to provide an explanation for adopting the recommendation. *See Camby*, 718 F.2d at 199. Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond*, 416 F.3d at 315 (quoting an advisory committee note on Fed. R. Civ. P. 72). Failure to file specific written objections to the Report results in a

party's waiver of the right to appeal from the judgement of the court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 145 (1985).

IV. CONCLUSION

After conducting a thorough review of the Report and record in this case, the court concludes that the Report provides an accurate summary of the facts and law and does not contain any clear error. Therefore, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 30) and **DISMISSES** this action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The previous Report and Recommendation (ECF No. 18) is rendered moot with the court's acceptance of the recommendation from the instant Report.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

July 2, 2021
Columbia, South Carolina